IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 605 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ISHWARBHAI P SOLANKI

Versus

BANK OF BARODA

Appearance:

MR KM SHETH for Petitioner

MR DARSHAN M PARIKH for Respondent No. 1

MR BHARAT J SHELAT for Respondent No. 2, 3, 4

CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 09/02/2001

ORAL JUDGEMENT

By means of filing this petition under Article 226 of the Constitution, the petitioner has prayed to issue a writ of mandamus or any other appropriate writ,

order or direction to quash and set aside order dated August 14/28, 1986 dismissing the petitioner from service passed by the Deputy General Manager, who is constituted as disciplinary authority under Bank of Baroda Officer Employees' (Discipline and Appeal) Regulations, 1976 ('the Regulations' for short) as well as order dated January 2, 1987 passed by the General Manager (International & Insp.), who is constituted as appellate authority under the Regulations confirming the order passed by the disciplinary authority and order dated November 11, 1987 passed by the Chairman and Managing Director, who is constituted as reviewing authority under the Regulations dismissing the review petition filed by the petitioner against order of disciplinary authority and the appellate authority.

2. It is necessary to refer to pivotal facts on which the fate of present petition depends. The panorama of events on the basis of which the petitioner came to be dismissed from service took its shape in 1981 at Anand Main Branch of Bank of Baroda where the petitioner was functioning as an officer. He was incharge of the Savings Bank Department of the said Branch. It so happened that one Mr. Purshottambhai Shanabhai Rohit was maintaining a savings account at the said Branch. On August 31, 1981, a cheque bearing No. 118173 for Rs.3000/- purportedly issued by Mr. Rohit, was passed for payment by the petitioner. The said cheque was issued from a cheque book having series No. 0118171 to 0118180. The said cheque book had not been issued to any customer of the Branch. It was later discovered that the said cheque book was missing from the Branch. The signature on the cheque was disputed by Mr. Rohit i.e. the A/c.holder and was confirmed to be forged one in view of opinion of the handwriting expert. The amount of cheque was received by the petitioner from the cashier. The debit entry of Rs. 3,000/- pertaining to the said cheque was first entered in the ledger and thereafter struck off from the ledger and balance was accordingly changed under the authentication initialled by the petitioner. These startling facts when discovered were sufficient enough for the disciplinary authority to start proceedings for disciplinary action against the petitioner. A departmental inquiry was ordered and charges were framed against the petitioner. The chargesheet dated May 9, 1985 mentioned following charges against the petitioner :

(1) He did not discharge his duties with utmost integrity and honesty, but in fact did such actions which display lack of probity on his part; (2) He did acts of fraud;

(3) He did acts of forgery; (4) He did not maintain discipline in all transactions; (5) He misused and abused his position as the officer of the Bank's branch; (6) He did not take all possible steps to ensure and protect the interest of the Bank, but in fact did acts of such commissions and omissions as were derogatory, detrimental and prejudicial to the interest of the Bank; (7) He did acts unbecoming of a Bank officer.

By an order dated August 19, 1985, the disciplinary authority appointed Manager (Function) Bank of Baroda, Cambay as inquiry officer. Before the inquiry officer, in support of management's case, Presenting Officer produced three witnesses and 18 documents, whereas the petitioner did not produce any document or examine any witness in his defence, but, written arguments were submitted by the petitioner. On assessment of evidence adduced before him, the inquiry authority came to the conclusion that the allegations levelled against the petitioner were proved and he accordingly submitted his detailed inquiry report dated February 28, 1986 to the disciplinary authority. The disciplinary authority took into consideration the report submitted by the inquiry officer as well as the evidence both- documentary and oral - adduced before the inquiry officer and on due consideration of all the facts and circumstances, held that the petitioner committed fraudulent acts which were derogatory, detrimental and prejudical to the interest of the Bank. Accordingly, the disciplinary authority in exercise of powers conferred upon him by sub-regulations 4(h), 5(3) & 7(3) of the Regulations, dismissed the petitioner from service by an order dated August 14/28, 1986, which is produced at Annexure-A to the petition. Feeling aggrieved by the said order, the petitioner preferred an appeal before the Appellate Authority constituted under the Regulations. The Appellate Authority reviewed the evidence on record and found that the disciplinary authority was justified in passing the order which was impugned in the appeal before it. The Appellate Authority, therefore, dismissed the appeal by an order dated January 2, 1987, which is produced at Annexure-B to the petition. Thereupon the petitioner filed Review Application before the Reviewing Authority constituted under the Regulations. The Reviewing Authority also dismissed the Review Petition by an order dated November 11, 1987, which is produced at Annexure-C to the petition. According to the petitioner, the cheque book though not issued to any particular customer, was used as a loose cheque book out of which two cheques bearing Nos.118171 and 118172 were issued to one party and as those two cheques though demanded, were

not supplied to the petitioner, nor produced before the inquiry officer, the findings recorded by the inquiry officer that the charges levelled against the petitioner were proved, should not have been upheld either by the disciplinary authority or by the Appellate Authority or by the Reviewing Authority. The petitioner has mentioned that in view of the judgment of Supreme Court in Union of India and others v. Mohd. Ramzan Khan, AIR 1991 SC 471, copy of report of the inquirying authority ought to have been supplied to the petitioner to enable him to make an effective representation and as the same was not supplied the orders impugned in the petition are liable to be set aside. In the alternative,the petitioner has averred that having regard to the facts of the case, penalty of dismissal from service imposed is not warranted at all and, therefore, the impugned orders should be quashed. Under the circumstances, the petitioner has filed present petition and claimed reliefs to which reference is made earlier.

3. Mr. K.M.Sheth, learned counsel for the petitioner submitted that two loose cheques though demanded, were never supplied to the petitioner and as reasonable opportunity to defend himself was not given to the petitioner, the impugned orders should be set aside. According to the learned counsel for the petitioner, in view of the decision of the Supreme Court in Mohd. Ramzan Khan's case (supra), non-supply of report of the inquirying authority is fatal and as the petitioner was not given any opportunity to represent against the conclusion of the inquirying authority holding that the charges levelled against the petitioner were proved, the petition should be accepted. Lastly, the learned counsel pleaded that punishment of dismissal from service imposed on the petitioner is harsh and, therefore, in any view of the matter, the same should be substituted by imposition of any lesser punishment.

4. Mr. Darshan M. Parikh, learned counsel for the respondents submitted that except demanding two cheques bearing Nos. 118171 & 118172, no details/information were supplied by the petitioner regarding those cheques and as the petitioner himself was given four days' period for search of the demanded cheques, it would not be correct to say that reasonable opportunity of being heard was not afforded to the petitioner. The learned counsel for the respondents emphasized that law laid down in Mohd. Ramzan Khan's case (supra) operates prospectively and as order of dismissal of the petitioner was passed in the year 1986, the order cannot be challenged on the ground of non-service of copy of inquiry report. What

was stressed by the learned counsel for the respondents was that the petitioner had committed fraudulent acts which were derogatory, detrimental and prejudicial to the interest of the Bank and, therefore, the order dismissing the petitioner from service cannot be treated as harsh one so as to warrant interference of this Court under Article 226 of the Constitution.

5. I have considered the arguments advanced at the Bar and the documents forming part of the record. The case involves not only serious charges of fraud, falsification of documents, forgery, but also on the other hand, involves the very subsistence of an officer of a Bank, who after several years of service, is shown the footpath, which is a very serious penalty entailing grave consequences. Therefore, I have given most sympathetic attention to every point urged by the learned counsel for the petitioner. The contention that two cheques bearing Nos. 118171 and 118172 were not supplied to the petitioner and, therefore, it should be held that the petitioner was not afforded reasonable opportunity of defending himself,is devoid of merits. It is relevant to notice that except demanding those two cheques, the petitioner had not given any details/information about those two cheques. The cheque bearing number 0118171 was produced and found to have been forged by the petitioner. It is not the case of the petitioner that there was also another cheque bearing number 0118172 over and above cheque bearing number 0118171 which was found to be forged one. Xerox copy of cheque bearing number 0118171 was supplied to the petitioner. Moreover, the petitioner himself was given four days' period for search of those demanded cheques, but the petitioner himself could not find out those two cheques and in these circumstances, the Presenting Officer could not have supplied the cheques to the petitioner when there existed none. How the cheque demanded by the petitioner was relevant to the inquiry or his defence is not pointed out by the petitioner. The finding recorded by the inquiry authority, which is accepted by the disciplinary authority, Appellate Authority as well as Reviewing Authority is that the cheques issued were from cheque book bearing series No. 0118171 to 0118180 and abstract of Page no.1 of cheque book register showed that the cheque book was not noted in the said register. In order to bring home the charges against the petitioner, the Presenting Officer had produced pass-book, cheques/withdrawal, payment scroll, cheque book, register, ledger abstract, hand-writing expert's opinion etc. and examined three witnesses; whereas the petitioner had not produced any document or examined any

witness in his defence. On appreciation of evidence, the inquirying authority by his reasoned order running into twelve pages concluded that the charges levelled against the petitioner were proved and after considering the evidence on record, the disciplinary authority accepted the finding of the inquirying authority and imposed upon the petitioner punishment of dismissal from services of the Bank. It is well settled that in a petition under Article 226 of the Constitution, finding of disciplinary authority cannot be interfered with on the ground that evidence before the Authority was insufficient. The writ court while exercising writ jurisdiction is not entitled to reverse a finding of inquirying authority on the ground that evidence adduced before it is insufficient. The well settled law is that if there is some evidence to support the conclusion of the inquirying authority, it is not the function of the court to review the evidence and to arrive at its own independent finding because the inquirying authority is the sole Judge of the fact so long as there is some legal evidence to substantiate the finding and adequacy or reliability of the evidence is not a matter which can be permitted to be canvassed before Court in writ proceedings. The record does not indicate that reasonable opportunity of defending himself was not afforded to the petitioner. The report of the inquirying authority would indicate that hearing before him had taken place on several dates and opportunity was given to the petitioner to produce documents and/or to examine witnesses in his defence. As observed earlier, it was established by cogent evidence before the inquirying authority that the cheque in question was issued from the cheque book bearing series No.0118171 to 0118180. Moreover, the written arguments submitted by the petitioner roughly running into 12 pages were also considered by the inquirying authority. Having regard to totality of the facts and circumstances of the case, I am of the opinion that the impugned orders are not liable to be set aside on the ground that sufficient opportunity of defending himself was not given to the petitioner. Thus, I do not find any substance in the first contention and the same is hereby rejected.

6. So far as submission based on the decision of the Supreme Court in Mohd. Ramzan Khan's case (supra) is concerned, the Supreme Court has settled the controversy in Commandant, Central Industrial Security Force and others v. Bhopal Singh, (1993) 4 SCC 785 by ruling that the law laid down in Mohd. Ramzan Khan's case on November 20, 1990 operates prospectively and order of removal passed earlier cannot be challenged on the ground of non-service of copy of inquiry report. Therefore, the

impugned orders cannot be set aside on the ground that opportunity to represent against the conclusion of inquiry officer holding that the charges levelled against the petitioner were proved, was not given to the petitioner.

7. The last contention that the order of dismissal is harsh and, therefore, should be set aside, has also no merits. As held by the disciplinary authority, the fraudulent acts committed by the petitioner are derogatory, detrimental and prejudicial to the interest of the Bank The evidence on record would show that the petitioner had used a cheque from a missing cheque book and withdrawn the amount belonging to an illiterate account holder by forging signature of A/c.holder. The amount of cheque was received by the petitioner from the cashier and the debit entry of Rs.3000/- pertaining to the said cheque was first entered in the ledger and thereafter struck off from the ledger and the balance was accordingly changed under the authentication made by the petitioner. The petitioner being in charge of Savings Bank Department of the Bank was holding a post of confidence and was not expected to misappropriate amount belonging to customer of the Bank by forging signature and documents. In view of the grave misconduct committed by the petitioner, I am of the opinion that punishment imposed on the petitioner cannot be regarded as harsh one so as to warrant interference of this court in present petition which is filed under Article 226 of the Constitution. Therefore, the last contention has also no substance and is hereby rejected.

Except the above-referred to three contentions, no other point has been urged by the learned counsel for the petitioner in support of the petition.

8. From the above discussion, it is evident that the petition has no merits and deserves to be dismissed.

The petition, therefore, fails and is dismissed. Rule is discharged, with no order as to costs.

(J.M.Panchal, J.)

(patel)